HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

C.W.P. No. 1425 of 2002

Reserved on : 1.5.2007

Date of Decision: 7.5.2007

Kali Dass & Others ……. Petitioners.

versus

General Manager, Beas Construction Board & Ors…... Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? No

For the petitioners : Mr. Rakesh Jaswal, Advocate.

For the respondents : Mr. N. K. Sood, Advocate.

Sanjay Karol, J. (Oral)

The Beas Construction Board was constituted by the Central Govt. in exercise of powers conferred upon it under Section 80(2) of the Punjab Reorganization Act, 1966, for the construction of the Beas Project works. By virtue of the provisions of Sections 80(5) & 80(6), the Beas Construction Board ceased to exist and the works were transferred to the Bhakra Beas Management Board. Upon completion of the work undertaken by the Board, considering the nature of the employment, i.e. on work charge basis, petitioners had to be retrenched. They had no right to be absorbed, regularized or be provided with employment elsewhere. Since there were large number of employees, who had to be retrenched being surplus, a request was made through various unions to arrange for an

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Whether reporters of local papers may be allowed to see the judgment?

alternate employment for the surplus / work charge employees of the Board, on humanitarian ground. Since the Punjab Govt. had undertaken the work of construction of Ranjit Sagar Dam, Shahpur Kandi, respondents persuaded the said Punjab Govt. to engage the surplus workers, on job order basis according to their requirements. With this background, the Management took a decision to place the services of the surplus work charge employees at the disposal of the authorities constructing Ranjit Sagar Dam.

Different letters were issued to the petitioners, one of which is on record being Annexure P1, dated 6.5.1991. The employees were informed that the services of surplus work charge employees have been placed at the disposal of Ranjit Sagar Dam authorities, to the extent of their requirements, on job order basis as temporary stop-gap-arrangement. Their headquarters was fixed at Ranjit Sagar Dam site and were directed to report on or before 14th May, 1991 for moving to the work site at Ranjit Sagar Dam. The respondents had arranged for transport vehicles to enable the petitioners and other similarly situated employees to travel to the Dam site. It seems that the petitioners, on way to the place of posting, left the vehicles in which they were travelling and choose not to join the alternate place of posting. Resultantly, notice of discharge under Section 25 FFF of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') was issued to all of the petitioners. One such notice being Annexure P3 dated 6.6.1991, is already on record. The receipt of the individual notice by the petitioners along with the compensation amount paid by cheque, is not in dispute. However, it seems that the petitioners had not encashed the cheques paid in terms of the said notice.

The Central Govt. vide notification dated 5th March, 1993 referred the dispute for adjudication to the Industrial Tribunal-cum-Labour Court, Chandigarh. The reference reads as under:-

> "Whether the action of the Executive Engineer BCB Bhiwani and Chief Engineer BCB (Electrical) Beas Project (Power Wing) BCB, SCO No. 62-63 Sector 17-A, Chandigarh in terminating the services of 29 workers (whose names & addresses are given below) is legally just and valid? If not, then to which relief these workmen are entitled to and from which date?."

Claim petitions in support of their claims were filed by the petitioners, which were duly replied to by the respondents. After taking on record the documents and recording of statements of witnesses, the Tribunal came to the conclusion that the petitioners were not entitled for any relief except for the retrenchment compensation lying with the Management.

The fact that the petitioners were employed on work charge basis and that there is no work available with the respondents, is not disputed. It is admitted by the parties that the notice of discharge under Section 25 FFF, has been issued and received by the petitioners along with the compensation amount. The limited ground on which the award has been challenged by the learned counsel for the petitioners is that the respondents could not have passed the order of retrenchment and payment of retrenchment compensation without deciding as to whether the petitioners had voluntarily abandoned the vehicles, mid way on being taken to the new place of posting or was it the respondents, who had deliberately and malafidely left the petitioners in lurch. The admitted case of the authorities is that the vehicles for transportation of the petitioners were

arranged by the respondents. The petitioners had boarded the vehicles for onward journey and mid way the petitioners contend that they have been left in lurch whereas the respondents contend that the petitioners left the vehicles voluntarily and returned back to their native place.

In my considered view, whether the petitioners had left or were abandoned, is not an issue which should materially weigh in the decision of the reference made by the Government. The reference is whether the action of the respondents in terminating the services is illegal, just and valid. Factual matrix is narrow and admitted. The petitioners were made fully aware that they being surplus, were liable to be retrenched on humanitarian grounds, an alternate employment on requirement basis without any liability on the part of the respondents was being arranged for. Petitioners were duly served with the adequate requisite notice and paid compensation under the Act. The Tribunal has already come to the findings that the petitioners were not willing to work at the Ranjit Sagar Dam. I would agree with the same. In this view of the matter, I am not inclined to interfere with the impugned award.

The writ petition is accordingly dismissed. The compensation amount paid by cheques or paid to the petitioners by an alternate mode, if not already encashed, shall be paid by the respondents within a period of four weeks from today. The petitioners shall intimate the respondents, through their counsels, giving the details of the bank account number, if any, and the address at which the amount is to be sent.

(Sanjay Karol)
Judge.

May 7, 2007
(rana)